

AMENDED IN ASSEMBLY JUNE 13, 2005

AMENDED IN ASSEMBLY JUNE 1, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1029

Introduced by Assembly Member Jerome Horton

February 22, 2005

An act to amend Sections 15604 and 15622 of, and to add Sections 8335, ~~15606.2~~, 15606.2 and 15622.5 to, the Government Code, relating to the State Board of Equalization.

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, as amended, Jerome Horton. The State Board of Equalization: ex parte communications, decisions, and determinations.

(1) The California Constitution establishes the State Board of Equalization consisting of the Controller and 4 members elected to 4-year terms at gubernatorial elections. Existing law authorizes the board to appoint its secretary who holds office at the pleasure of the board.

This bill would provide that the appointment of the ~~secretary~~ *executive officer* is subject to Senate confirmation. The bill would also prohibit the board from participating in the personnel process, except as specified.

(2) Existing law authorizes the board to sell at prices fixed by the board copies of compilations of the revenue laws of the state, maps, and other documents.

This bill would require the board to ~~publish and~~ make *public and* readily available on the Internet all board decisions and determinations and would authorize the board to sell copies of any decision or determination required to be published.

~~This bill would prohibit a board member or any person who intends to influence the decision of a board member on an adjudicatory matter before the board, except a staff member acting in his or her official capacity, to conduct an ex parte communication during the 2-week period preceding an adjudicatory proceeding on the matter. The bill would require the full disclosure of an ex parte communication between a board member and any interested party, as defined, in the board's record if an ex parte communication occurs during the 2 weeks preceding an adjudicatory proceeding, and if an ex parte communication occurs in violation of this provision, the board would be required to postpone the adjudicatory proceeding for at least 2 weeks after the date on which the board member fully discloses and makes public that communication in a matter pending before the board for adjudication. The bill would require all relevant information to a matter set for adjudicatory hearing before the board to be provided to all parties to the matter, as well as to board proceeding staff, at least 14 days before the hearing. The bill would provide that if relevant information is offered or provided by the taxpayer that was not made available to all parties to the proceeding and to the board proceedings staff, the bill would require the hearing on the matter to be continued to a hearing date not less than 14 days after the information is made available to the parties and the board staff.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 8335 is added to the Government Code,~~
- 2 ~~to read:~~
- 3 ~~8335. (a) The Legislature finds and declares that the State~~
- 4 ~~Board of Equalization, the Franchise Tax Board, and the~~
- 5 ~~Employment Development Department shall cooperate with each~~
- 6 ~~other to acquire new technology, computers, and equipment that~~
- 7 ~~are compatible among each of these agencies.~~
- 8 ~~(b) In order to facilitate the sharing of information, the State~~
- 9 ~~Board of Equalization, the Franchise Tax Board, and the~~
- 10 ~~Employment Development Department shall use a common~~
- 11 ~~identification number, such as a taxpayer's identification number~~
- 12 ~~for federal tax purposes, whenever it is apparent that the agencies~~

1 ~~will be sharing any information with each other regarding any~~
2 ~~person with a matter before any of these agencies.~~

3 ~~SEC. 2.—~~

4 *SECTION 1.* Section 15604 of the Government Code is
5 amended to read:

6 15604. (a) The board may appoint its ~~secretary~~ *executive*
7 *officer*, subject to Senate confirmation, and prescribe and enforce
8 his or her duties. The ~~secretary~~ *executive officer* shall hold office
9 during the pleasure of the board and shall receive compensation
10 as prescribed by the board.

11 (b) The board may employ expert and clerical assistants as it
12 deems necessary in the performance of its powers and duties.
13 However, the board *members* shall not participate in the
14 personnel process, except for (1) hiring that is at or above the
15 level of Career Executive Assistant or district administrator, or
16 hiring immediate staff; (2) legal matters coming before the board
17 in connection with personnel; and (3) as otherwise necessary to
18 discharge its duties derived from the California Constitution.

19 ~~SEC. 3.— Section 15606.2 is added to the Government Code, to~~
20 ~~read:~~

21 ~~15606.2. (a) For the purposes of this section, “ex parte~~
22 ~~communication” means any oral or written communication~~
23 ~~between a member of the board and an interested person, about~~
24 ~~an adjudicatory matter before the board, other than purely~~
25 ~~procedural matters, that does not occur in a public hearing,~~
26 ~~workshop, or other official proceeding, or on the official record~~
27 ~~of the proceeding on the matter.~~

28 ~~(b) No board member or any person who intends to influence~~
29 ~~the decision of a board member on an adjudicatory matter before~~
30 ~~the board, except a staff member of the board acting in his or her~~
31 ~~official capacity, shall conduct an ex parte communication during~~
32 ~~the two-week period preceding an adjudicatory proceeding on the~~
33 ~~matter.~~

34 ~~(c) If an ex parte communication occurs during the two weeks~~
35 ~~preceding an adjudicatory proceeding on the matter, a full~~
36 ~~disclosure of the ex parte communication shall be entered in the~~
37 ~~board’s record. The disclosure of an ex parte communication~~
38 ~~shall include the names of the participants, the action discussed,~~
39 ~~and the position of the party in the communication.~~

~~(d) Communications cease to be ex parte communications prior to the two weeks preceding an adjudicatory proceeding on the matter when either of the following occurs:~~

~~(1) The board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board's official record of the proceeding.~~

~~(2) When two or more board members receive substantially the same written communication, or are party to the same oral communication, from the same party on the same matter, and a single board member fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.~~

~~(e) If an ex parte communication occurs in violation of subdivision (b), the board shall postpone the adjudicatory proceeding for at least two weeks after the date on which the board member fully discloses and makes public the ex parte communication.~~

SEC. 2. Section 15606.2 is added to the Government Code, to read:

15606.2. (a) If an ex parte communication occurs between a board member and any interested party to any matter pending before the board for adjudication, the board member must disclose the ex parte communication on the record of the board proceedings at the commencement of the hearing on the matter. The disclosure must include the name and position of each interested party, the date, the subject matter discussed, and the information provided to the board member.

(1) For purposes of the section, "ex parte communication" means any written or oral communication between a member of the board and an interested person about an adjudicatory matter before the board, other than purely procedural matters, that does not occur in a public hearing, workshop, or other official proceeding or on the official record of the proceeding on the matter.

(2) For purposes of this section, "interested party" means any person that has an interest in the outcome of the adjudicatory matter pending before the board, whether direct or indirect or whether pecuniary or not. An interested party includes, but is not

1 *limited to, the taxpayer, the taxpayer's representatives, and any*
2 *other person who intends to influence the decision of a board*
3 *member on an adjudicatory matter pending before the board.*

4 *(b) All relevant information on any matter set for an*
5 *adjudicatory hearing before the board shall be provided to all*
6 *parties to the matter, as well as to board proceeding staff, at*
7 *least 14 days prior to the hearing. If any relevant information is*
8 *offered or provided by the taxpayer that was not made available*
9 *to all parties to the proceeding and to the board proceedings*
10 *staff, the hearing on the matter shall be continued to a hearing*
11 *date not less than 14 days after the information is made available*
12 *to the parties to the proceeding and to the board proceeding*
13 *staff. The parties to the matter may agree to waive the*
14 *continuance required under this subdivision if they determine a*
15 *continuance is not necessary for fair resolution of the matter.*

16 ~~SEC. 4.—~~

17 *SEC. 3.* Section 15622 of the Government Code is amended
18 to read:

19 15622. The board may sell at prices fixed by the board copies
20 of compilations of the revenue laws of the state, any decision or
21 determination required to be published pursuant to Section
22 15622.5, maps, and other documents.

23 ~~SEC. 5.—~~

24 *SEC. 4.* Section 15622.5 is added to the Government Code, to
25 read:

26 15622.5. The board shall ~~publish and make~~ *make public and*
27 *readily available on the Internet all board decisions and*
28 *determinations.*